of the defendant within the compensation act. *State v. District Court* (1917, Minn.) 165 N. W. 268.

An essential element of the relation of master and servant is the submission by the servant to the direction of the master. Labatt, *Master and Servant,* sec. 2. The relation is a contractual one, and to entitle one to the special benefits arising out of it, both at common law and under the various compensation acts, there must be a contract of employment, either express or implied. *Atlantic, etc., R. R. Co. v. West* (1905) 121 Ga. 641, 49 S. E. 711; *Sibley v. State* (1915) 89 Conn. 682, 96 Atl. 161. Hence, one who is injured while assisting an employee at his request is not compensated unless that employee had the apparent authority to create that contractual relation on behalf of his employer. Under ordinary circumstances, an employee has not this power. *Flower v. Pennsylvania R. R. Co.* (1871) 69 Pa. St. 210; *Mickelson v. New East Tintic Co.* (1900) 23 Utah, 42, 64 Pac. 463; *Yazoo & M. V. R. Co. v. Stansberry* (1910) 97 Miss. 831, 53 So. 389. In an emergency, however, when immediate action is required in the employer's interest, and there is no fellow-employee present and ready to assist, most courts recognize such a power by implication. *Central Trust Co. of N. Y. v. Texas & St. L. Ry. Co.* (1887, C. C. E. D. Mo.) 32 Fed. 448; *Louisville & N. R. Co. v. Ginley* (1897) 100 Tenn. 472, 45 S. W. 348; but see *Blair v. Grand Rapids R. R. Co.* (1886) 60 Mich. 124, 26 N. W. 855. And in such cases, the assistant may be a fellow servant, although he intends his services to be temporary and gratuitous. *Johnson v. Ashland Water Co.* (1888) 71 Wis. 553, 37 N. W. 823; *Aga v. Harbach* (1905) 127 Iowa 144, 102 N. W. 833. The decision in the principal case is, however, open to question, since it does not appear in the report whether the assistant had submitted to the directions of the driver. Granting, however, that the relation of master and servant did exist, recovery in the principal case was possible only because the Minnesota statute, unlike many compensation acts, does not bar casual employees from its operation, when the work in which they are engaged is in the usual course of the employer's business. *State v. District Court* (1915) 131 Minn. 352, 155 N. W. 103. See *Thompson v. Twiss* (1916) 90 Conn. 444, 449; 97 Atl. 328, 331.

WILLS—REVOCABILITY—EFFECT OF CONTRACT TO DEVISE.—The probate court admitted to probate as a will an instrument which was in form a deed, reciting a present consideration and conveying all the property the grantor should own at her death to her husband, with the proviso that "this is to take effect only in case of my death prior to that of my husband." Following the state practice permitting a person who has not contested a will in the probate court to do so by bill in chancery, the beneficiaries under a will later in date brought their bill to set aside the probate of the earlier instrument, a copy of which they incorporated in their bill. *Held,* that a demurrer to the bill was good, since the earlier will, being based upon a valuable consideration, was irrevocable; also that a court of equity would not act to set aside the probate, since it would then have to decree a trust in the husband's favor, and thus render its own action nugatory. *Walker v. Yarbrough* (1917, Ala.) 76 So. 390.

See COMMENTS, p. 542.

WITNESSES—COMPETENCY—FORMER CONVICTION OF FELONY.—Upon the trial, in the United States District Court for the Eastern District of New York, of two defendants charged with conspiring to receive property stolen from "duly authorized depositories of United States mail matter" in violation of a federal statute, the prosecution offered the testimony of one Broder, who had formerly been sentenced for forgery in a state court of New York and had served a term therefor. This testimony was received over objection, and the defendants

having been convicted, its admission was assigned as error. *Held,* that the testimony of Broder was properly admitted. Vandevanter and McReynolds, JJ. *dissenting. Rosen v. United States* (1918) 38 Sup. Ct. 148.

At common law a witness was held incompetent to testify upon a showing that he had ever been convicted and sentenced for a crime, even that of petty larceny. *Pendock v. Mackinder* (1755, Eng. C. P.) Willes, 665. Official pardon, however, restored his civil rights in this particular as in others. *Rex v. Celier* (1680, K. B.) T. Raym. 369; *The King v. Reilly* (1787, K. B.) Leach, 509. In 1843, Lord Denman's Act was passed, growing out of a rising belief that valuable, sometimes essential, evidence was stifled by this technical rule, and providing that no person should thereafter be excluded from testifying because of a previous conviction for crime. 6 & 7 Vict. c. 85; 4 Chitty's Eng. St. (6th ed.) 531. This statute was the pattern for many later enacted in the United States and the Dominion. See 1 Wigmore, *Evidence,* sec. 488. At the present time the common law rule has been very generally abolished in the courts of the States. See, however, *Berry v. Godwin* (1916, Tex. Civ. App.) 188 S. W. 30. In *United States v. Reid* (1851, U. S.) 12 How. 361, 366, it was held that the competency of witnesses in criminal trials in the United States courts must be determined by the laws in force in the respective states when the Judiciary Act of 1789 was passed. No act of Congress has yet been passed to change this rule, which has been followed by the federal courts in cases some of which are of very recent date. See for example *United States v. Gwynne* (1914, E. D. Pa.) 209 Fed. 993; *United States v. Hughes* (1892, D. C., W. D. Pa.) 175 Fed. 238. See also *Logan v. United States* (1892) 144 U. S. 263, 298-303; 12 Sup. Ct. 617, 628-630. By the law of New York in 1789, which, under the rule of the *Reid* case, would have governed in the principal case, one convicted of forgery was disqualified as a witness. The court, however, declined to follow the *Reid* case, holding that in view of the general change during the last century in the law relative to the competency of witnesses, and the sound reasons on which this change has proceeded, "the dead hand of the common law rule of 1789" should no longer govern the determination of such questions. This decision finds some support in a previous case by which the authority of the *Reid* case was somewhat shaken, though it was by no means overruled. See *Benson v. United States* (1892) 146 U. S. 325, 3 Sup. Ct. 60. The result is commendable, but it may be doubted whether the court did not encroach somewhat on the legislative field in accomplishing it.